

ASSEMBLY BILL

No. 664

Introduced by Assembly Member Maddox

February 23, 1999

An act to amend Sections 1237.5 and 1238 of the Penal Code, relating to criminal appeals.

LEGISLATIVE COUNSEL'S DIGEST

AB 664, as introduced, Maddox. Criminal appeals.

Existing law prohibits a defendant in a criminal case from taking an appeal from a judgment of conviction upon a guilty plea or plea of nolo contendere, or a revocation of probation following an admission of violation, unless the defendant files a written statement under oath showing specified grounds going to the legality of the proceedings and the court executes and files a certificate of probable cause.

This bill would amend the above provision by completely barring a defendant from taking an appeal from a judgment of conviction upon a guilty plea or plea of nolo contendere, or a revocation of probation following an admission of violation where in addition, the defendant receives a penalty no greater than the maximum penalty stipulated by the parties or indicated by the court prior to the plea or admission.

Existing law authorizes the people in a criminal case to take an appeal under specified circumstances including from an order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed.

This bill would expand the grounds of appeal under the above provision by authorizing the people to take an appeal

from an order modifying the verdict or finding by dismissing the offense.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1237.5 of the Penal Code is
2 amended to read:

3 1237.5. (a) No appeal shall be taken by the defendant
4 from a judgment of conviction upon a plea of guilty or
5 nolo contendere, or a revocation of probation following
6 an admission of violation, except where both of the
7 following are met:

8 ~~(a)~~

9 (1) The defendant has filed with the trial court a
10 written statement, executed under oath or penalty of
11 perjury showing reasonable constitutional, jurisdictional,
12 or other grounds going to the legality of the proceedings.

13 ~~(b)~~

14 (2) The trial court has executed and filed a certificate
15 of probable cause for such appeal with the county clerk.

16 *(b) Notwithstanding subdivision (a) or any other*
17 *provision of law, no appeal on any issue shall be taken by*
18 *the defendant from a judgment of conviction upon a plea*
19 *of guilty or nolo contendere, or a revocation of probation*
20 *following an admission of violation, when the defendant*
21 *has received a penalty no greater than the maximum*
22 *penalty stipulated by the parties or indicated by the court*
23 *prior to the plea or admission.*

24 (c) This section shall become operative on January 1,
25 1992.

26 SEC. 2. Section 1238 of the Penal Code is amended to
27 read:

28 1238. (a) An appeal may be taken by the people from
29 any of the following:

30 (1) An order setting aside all or any portion of the
31 indictment, information, or complaint.

32 (2) An order sustaining a demurrer to all or any
33 portion of the indictment, accusation, or information.

1 (3) An order granting a new trial.

2 (4) An order arresting judgment.

3 (5) An order made after judgment, affecting the
4 substantial rights of the people.

5 (6) An order modifying the verdict or finding *by*
6 *dismissing the offense, or* by reducing the degree of the
7 offense or the punishment imposed, or *by* modifying the
8 offense to a lesser offense.

9 (7) An order dismissing a case prior to trial made upon
10 motion of the court pursuant to Section 1385 whenever
11 such order is based upon an order granting the
12 defendant's motion to return or suppress property or
13 evidence made at a special hearing as provided in this
14 code.

15 (8) An order or judgment dismissing or otherwise
16 terminating all or any portion of the action including such
17 an order or judgment after a verdict or finding of guilty
18 or an order or judgment entered before the defendant
19 has been placed in jeopardy or where the defendant has
20 waived jeopardy.

21 (9) An order denying the motion of the people to
22 reinstate the complaint or a portion thereof pursuant to
23 Section 871.5.

24 (10) The imposition of an unlawful sentence, whether
25 or not the court suspends the execution of the sentence,
26 except that portion of a sentence imposing a prison term
27 which is based upon a court's choice that a term of
28 imprisonment (A) be the upper, middle, or lower term,
29 unless the term selected is not set forth in an applicable
30 statute, or (B) be consecutive or concurrent to another
31 term of imprisonment, unless an applicable statute
32 requires that the term be consecutive. As used in this
33 paragraph, "unlawful sentence" means the imposition of
34 a sentence not authorized by law or the imposition of a
35 sentence based upon an unlawful order of the court
36 which strikes or otherwise modifies the effect of an
37 enhancement or prior conviction.

38 (b) If, pursuant to paragraph (8) of subdivision (a),
39 the people prosecute an appeal to decision, or any review
40 of such decision, it shall be binding upon them and they

1 shall be prohibited from refiling the case which was
2 appealed.

3 (c) When an appeal is taken pursuant to paragraph (7)
4 of subdivision (a), the court may review the order
5 granting the defendant's motion to return or suppress
6 property or evidence made at a special hearing as
7 provided in this code.

8 (d) Nothing contained in this section shall be
9 construed to authorize an appeal from an order granting
10 probation. Instead, the people may seek appellate review
11 of any grant of probation, whether or not the court
12 imposes sentence, by means of a petition for a writ of
13 mandate or prohibition which is filed within 60 days after
14 probation is granted. The review of any grant of
15 probation shall include review of any order underlying
16 the grant of probation.

